

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

PORT OF FRIDAY HARBOR

AGREED ORDER

No. DE \_\_\_\_\_

TO:  
Todd Nicholson, Executive Director  
Port of Friday Harbor  
204 Front Street  
Friday Harbor, WA 98250

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## I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Friday Harbor (PFH) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires PFH to perform a Remedial Investigation and Feasibility Study (RI/FS) and to prepare a draft Cleanup Action Plan (dCAP), addressing both upland and in-water contamination for the Albert Jensen and Sons, Inc. Boatyard and Marina Site. Ecology believes the actions required by this Order are in the public interest.

## II. JURISDICTION

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

## III. PARTIES BOUND

This Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. PFH agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter PFH's responsibility under this Order. PFH shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

## IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D, WAC 173-204, -340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Albert Jensen and Sons, Inc. Boatyard and Marina. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to

Ecology, the Site is generally located at 1293 Turn Point Road, Friday Harbor, WA 98250 as shown in the Site Location Diagram (Exhibit A).

- B. Parties: Refers to Ecology and PFH.
- C. Potentially Liable Persons (PLP(s)): Refers to PFH.
- D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.

All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

E. In-Water Area: Refers to the intertidal (areas exposed to air at low tide) and subtidal (areas always covered by water) areas associated with adjacent marine waters.

F. Upland Area: Refers to areas of the Site that falls outside of the In-Water Area, as generally depicted in Exhibit A.

## V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by PFH:

A. The boatyard and marina located at the Site has operated as a commercial shipyard since approximately 1910. Activities at the shipyard that likely contributed to increased contamination concentrations include the application and removal of antifouling paints, mechanical, and general maintenance work both over water and land, and treatment of wooden boats using pesticides. Also present on site was a former underground gasoline storage tank, a machine shop that was also used for hazardous chemical storage, a small dump site, and a marine railway.

B. On May 18, 2018, PFH purchased the 26.7 acre property parcel (Parcel ID# 351341005000) from Albert Jensen and Sons, Inc., on which the Upland Area of the shipyard and marina is located.

C. A phase I environmental assessment conducted by Whatcom Environmental in November 2017 revealed evidence of several recognized environmental conditions at the Upland

Area and In-Water Area, which was subsequently confirmed by soil and sediment sampling in a phase II assessment in April 2018.

D. Soil sampling confirmed PAHs, petroleum products, PCBs, metals, and halogenated pesticides above screening levels. Sediment sampling confirmed non halogenated solvents, PAHs, PCBs, and metals (copper, mercury, zinc).

E. Concentrations of carcinogenic contaminants in soils and sediments such as carcinogenic PAHs and PCBs currently pose a threat to human health and environment through a number of complete exposure pathways at the site. Furthermore exceedances of Sediment Management Standards benthic chemical criteria is likely resulting in increased toxicity and impacts to benthic communities.

## VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by PFH.

A. PFH is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32), (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to PFH dated October 8, 2018, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that PFH is a PLP under RCW 70.105D.040 and notified PFH of this determination by letter dated December 13, 2018.

D. Pursuant to RCW 70.105D.030(1), .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the

foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, RI/FS, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning an interim action, the Parties will follow the process in Section VII.D (Work to be Performed). If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that PFH take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340, -204:

A. PFH shall perform an RI/FS for the site, as well as develop a dCAP, in accordance with the Scope of Work and Schedule, which are attached to this order as Exhibit B. This work shall include, but is not limited to the following tasks:

1. Compile and summarize existing data regarding previous site investigations.
2. Develop a conceptual site model.
3. Identify potential data gaps.
4. Develop a sampling and analysis plan (SAP) to address data gaps on the site. The SAP should include a description of investigations to determine the lateral and vertical extent of contamination as a result of shipyard and marina operations.

5. PFH shall perform the investigations and present the results to Ecology in the draft RI/FS report. In addition, the draft RI/FS report shall include identification of soil, sediment, and groundwater cleanup levels, where appropriate, and those areas requiring remediation. The FS section shall include the evaluation of cleanup action alternatives.

6. PFH shall prepare a preliminary dCAP describing final cleanup actions for the site, consistent with MTCA and Sediment Management Standard requirements.

B. The following naming conventions shall be used for documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and Ecology approval); and the preliminary Draft CAP (designation for the Subject PLP(s)'s version of the DCAP).

C. All plans or other deliverables submitted by PFH for Ecology's review and approval under the Scope of Work and Schedule of Deliverables in Exhibit B shall, upon Ecology's approval, become integral and enforceable parts of this Order.

D. If PFH learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, or sediments, PFH, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

E. If the Parties agree on an interim action under Section VI.E (Ecology Determinations), PFH shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). PFH shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and PFH is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

F. If Ecology determines that PFH has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to PFH, perform any or all portions of the remedial action or at Ecology's discretion allow PFH opportunity to correct. In an emergency, Ecology is not required to provide notice to PFH, or an opportunity for dispute resolution. PFH shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

G. Except where necessary to abate an emergency situation or where required by law, PFH shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, PFH must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

## VIII. TERMS AND CONDITIONS

### A. Payment of Remedial Action Costs

PFH shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated [\$ amount provided by TCP Cost Recovery Coordinator] in remedial action costs related to this Site as of [insert date]. For all Ecology costs incurred subsequent to [insert date], PFH shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of

work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

**B. Designated Project Coordinators**

The project coordinator for Ecology is:

John Evered  
Toxics Cleanup Program  
P.O. Box 47600  
Olympia, WA 98504-7600  
360-407-7071

The project coordinator for PFH is:

Todd Nicholson  
204 Front Street  
Friday Harbor, WA 98250  
360-378-2688  
toddn@portfridayharbor.org

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and PFH, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.



**C. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW18.43.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43.220.

PFH shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**D. Access**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that PFH either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing PFH's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by PFH. PFH shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by PFH where remedial activities or investigations will be performed pursuant to this

Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by PFH unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**E. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, PFH shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, PFH shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by PFH pursuant to implementation of this Order. PFH shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow PFH and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify PFH prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

**F. Public Participation**

Ecology shall maintain the responsibility for public participation at the Site. However, PFH shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, RI/FS reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify PFH prior to the issuance of all press releases and fact sheets related to the Site, and before major meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by PFH that do not receive prior Ecology approval, PFH shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. San Juan Island Library  
1010 Guard Street  
Friday Harbor, WA 98250
- b. Department of Ecology Toxics Cleanup Program  
Headquarters Office  
300 Desmond Drive  
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Headquarters Office in Lacey, Washington.

**G. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, PFH shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, PFH shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right PFH may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If PFH withholds any requested records based on an assertion of privilege, PFH shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

**H. Resolution of Disputes**

1. In the event that PFH elects to invoke dispute resolution PFH must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), PFH has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those fourteen (14) calendar days, then within seven (7) calendar days, Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; PFH's position with regards to the dispute; Ecology's

position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. PFH may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Headquarters Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

#### **I. Extension of Schedule**

1. PFH's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on PFH to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of PFH including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by PFH.
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of PFH.

3. Ecology shall act upon any PFH written request for extension in a timely fashion. Ecology shall give PFH written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At PFH's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner.

- b. Other circumstances deemed exceptional or extraordinary by Ecology.
- c. Endangerment as described in Section VIII.K (Endangerment).

**J. Amendment of Order**

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and PFH. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, PFH shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

**K. Endangerment**

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct PFH to cease such activities for such period of time as it deems necessary to abate the danger. PFH shall immediately comply with such direction.

In the event PFH determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, PFH may cease such activities. PFH shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon

Ecology's direction, PFH shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with PFH's cessation of activities, it may direct PFH to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, PFH's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**L. Reservation of Rights**

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against PFH to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against PFH regarding remedial actions required by this Order, provided PFH complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, PFH does not admit to any liability for the Site. Although PFH is committing to conducting the work required by this Order under the terms of this Order, PFH expressly reserves all rights available under law, including but not limited to the right to seek cost



recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

**M. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by PFH without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to PFH's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, PFH shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, PFH shall notify Ecology of said transfer. Upon transfer of any interest, PFH shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

**N. Compliance with Applicable Laws**

1. *Applicable Laws.* All actions carried out by PFH pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. PFH has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or PFH, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and PFH must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by PFH pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements

are identified by Ecology or PFH, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and PFH must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), PFH may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, PFH shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. PFH has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or PFH determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or PFH shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, PFH shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by PFH and on how PFH must meet those requirements. Ecology shall inform PFH in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. PFH shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary

for the state to administer any federal law, the exemption shall not apply and PFH shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

**O. Indemnification**

PFH agrees, to the extent permitted by law, to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of PFH, its officers, employees, agents, or contractors in entering into and implementing this Order. However, PFH shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon PFH's receipt of written notification from Ecology that PFH has completed the remedial activity required by this Order, as amended by any modifications, and that PFH has complied with all other provisions of this Agreed Order.

**X. ENFORCEMENT**

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: \_\_\_\_\_

PORT OF FRIDAY HARBOR



Todd Nicholson  
Executive Director  
Port of Friday Harbor  
360-378-2688

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Barry Rogowski  
Section Manager  
Toxics Cleanup Program  
Headquarters Cleanup Section  
360-407-7226

Site Boundary

Filename: /Friday Harbor/GIS/Jensens\_InWaterUplandArea\_201911.mxd User: Springborn Version time: 11/6/2019 @7:53pm

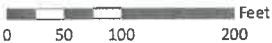


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Port of Friday Harbor  
Jensen and Sons Boatyard and Marina

Exhibit A. Site Location Diagram

Data Sources: Leon Environmental, LLC (2018)



# **EXHIBIT B – SCOPE OF WORK (SOW) AND SCHEDULE**

## **SCOPE OF WORK**

### **PURPOSE**

The work under this Agreed Order (AO) involves conducting a Remedial Investigation (RI) and Feasibility Study (FS), conducting interim actions if required or agreed to by Ecology, and preparing a preliminary Draft Cleanup Action Plan (DCAP) to select a cleanup alternative. The purpose of the RI/FS, and preliminary DCAP for the Site is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site.

The Port of Friday Harbor (PFH) shall coordinate with Ecology throughout the development of any Interim Action, the RI/FS, and the preliminary DCAP, and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop.

The SOW is divided into seven major tasks as follows:

- Task 1. RI Work Plan
- Task 2. Remedial Investigation
- Task 3. Interim Action(s) (if required)
- Task 4. Remedial Investigation/ Feasibility Study Report
- Task 5. SEPA Compliance
- Task 6. Public Participation
- Task 7. DCAP

### **TASK 1. RI WORK PLAN**

PFH shall prepare a Remedial Investigation Work Plan (Work Plan). The Work Plan shall include an overall description and schedule of all RI activities. The Work Plan shall clearly describe the project management strategy for implementing and reporting on RI activities. The plan will outline the responsibility and authority of all organizations and key personnel involved in conducting the RI.

A Key Project Meeting will be held prior to submittal of the RI Work Plan. The purpose of the Remedial Investigation Planning Meeting is to review requirements for the Work Plan and plan Remedial Investigation field work, discuss the preliminary Conceptual Site Model, and identify project data needs and possible interim actions.

The Work Plan shall describe general facility information; site history and conditions; including previous operations; past field investigations, including any data collection and analysis of soils, air, groundwater, surface water, and sediments; a conceptual site model showing contaminants, migration pathways in all environmental media, and potential receptors; geology and groundwater system characteristics; past, current, and future land use; identification of natural resources and ecological receptors; hazardous substances and their sources, etc., in compliance with WAC 173-340-350 and WAC 173-204-550.

As part of the project background, existing environmental data on site soil, groundwater, surface water, and sediments will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary. The Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination. PFH will also submit a copy of the Health and Safety Plan (HASP) for the project.

The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, stormwater, seep, catch basin and sediment samples, approximate depths, and includes a quality assurance project plan. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; data and records management; and schedule.

The Quality Assurance Project Plan (QAPP) will be prepared in accordance with the Guidance for Preparation of Quality Assurance Project Plans, EPA Region 10, Quality Data Management Program, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (Revised 2016)<sup>1</sup> and Sediment Cleanup User's Manual (Revised December 2017).<sup>2</sup> Laboratories must meet the accreditation standards established in WAC 173-50. Data quality objectives will reflect the criteria or threshold values used for the source control evaluation.

The SAP, including the QAPP, will be submitted to Ecology for review and approval. As with all environmental work at the site, work may not begin without written approval from Ecology. The plan shall provide seven (7) days notice to Ecology prior to beginning sampling. Ecology may obtain split samples.

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<sup>1</sup> <https://fortress.wa.gov/ecy/publications/summarypages/0403030.html>

<sup>2</sup> <https://fortress.wa.gov/ecy/publications/summarypages/1209057.html>

PFH or their contractors shall submit all new sampling data generated under this SAP and any other recently collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements (Exhibit C). Only validated data will be entered into the EIM database within 30 days of submittal.

RI Work Plan tasks and subtasks will include the following:

- Sampling and analysis of soil, groundwater, and seeps;
- Sampling and analysis of surface and subsurface sediments;
- Sampling and analysis of stormwater and catch basin solids to determine whether any stormwater system is a source of contamination to sediments;
- Evaluate the potential to contaminate or recontaminate sediments, including analysis of the following pathways:
  - Direct discharges
  - Stormwater discharges
  - Overland flow
  - Groundwater discharges and seeps
  - Soil erosion
  - Site operations
  - Spills, dumping, leaks, housekeeping, and management practices;

PFH will provide Ecology with an Agency Review Draft Work Plan. Once Ecology reviews and approves the Work Plan, it will be considered the Final Work Plan. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, PFH will implement the Final Work Plan according to the schedule contained in this Exhibit.

PFH shall prepare and submit two (2) hard copies of the Agency Review Draft RI Work Plan as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After incorporating Ecology's comments on the Agency Review Draft Work Plan and after Ecology approval, PFH shall prepare and submit three (3) hard copies of the Final Work Plan as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology.

## **TASK 2. REMEDIAL INVESTIGATION**

PFH shall conduct an RI that meets the requirements of WAC 173-340-350(7) and WAC 173-204-550 according to the Work Plan as approved by Ecology. The RI will determine the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels, preliminary Sediment Management Standards (SMS) cleanup standards, and other regulatory requirements. The RI must provide sufficient data and information to define the nature and extent of contamination.



Field sampling and analysis will be completed in general accordance with the SAP and QAPP. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

PFH shall provide interim data reports and updates to Ecology as new site data and information become available. Laboratory analysis data shall also be provided in electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request.

Prior to submittal of the Agency Review Draft RI/FS Report (see task 4), a Key Project Meeting will be held. During this Pre-Report Check-In, Ecology and PFH will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI/FS Report. Ecology and PFH will review review ARARs and potential remedial alternatives and establish points of compliance for the FS.

If the data collected during this investigation is insufficient to define the nature and extent of contamination, and/or to select a cleanup action plan an additional phase of investigation shall be conducted to define the extent of contamination.

### **TASK 3. INTERIM ACTIONS (if required)**

Remedial actions implemented prior to completion of the RI/FS, including those that:

- are technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance;
- correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action

will be considered interim actions, will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

As detailed in the AO, if required by Ecology, or if proposed by PFH and approved by Ecology, PFH will implement an interim action. Based upon information in the Agency Review Draft RI Report, interim action(s) may be needed to expedite control of releases to sediments or other environmental media pursuant to WAC 173-340-430.

The scope of the interim actions may include, but not be limited to, typical source control or containment elements such as:

- Soil or sediment removal
- Groundwater remediation
- Repair, slip lining, replacement, or closure of stormwater conveyances or other

- structures such as conduit, vaults, catch basins, etc.
- Removal of underground storage tanks and pipes
  - Removal of old drain fields or former surface impoundments
  - Proper abandonment of old wells
  - Removal of contaminated building or other structural material
  - Construction of a treatment facility
  - Shoreline stabilization such as bulkhead repair, erosion or seepage control, and grading or clearing.

If an interim action is to be performed, PFH will prepare and submit for Ecology approval an Agency Review Draft Interim Action Work Plan (IAWP) with detail commensurate with the work to be performed. The Agency Review Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known);
- Summary of relevant RI/FS information, including at a minimum existing site conditions and alternative interim actions considered;
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities;
- Compliance Monitoring Plan;
- SAP/QAPP
- Permits required.

PFH will also submit a copy of the Health and Safety Plan for the project. PFH will be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist for the interim action, and will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

PFH shall prepare and submit two (2) hard copies of the Agency Review Draft Interim Action Work Plan as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. PFH shall incorporate Ecology's comments and then prepare and submit two (2) hard copies of the Public Review Draft Interim Action Work Plan as well as electronic copies each in Word (.doc) and Adobe (.pdf) formats, to Ecology. After a public notice and comment period for the Public Review Draft IAWP (and SEPA determination), Ecology will approve the IAWP (if appropriate) and the document will be considered Final. PFH shall prepare and submit three (3) hard copies of the Final Interim Action Work Plan as well as electronic copies in Word (.doc) and Adobe (.pdf) formats. Once approved by Ecology, PFH will implement the interim action according with the approved schedule.

Upon successful completion of the work, an Agency Review Draft Interim Action Report will be prepared as a separate deliverable. PFH shall prepare and submit two (2) hard copies of the Agency Review Draft Interim Action Report as well as electronic copies in

Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval, PFH shall prepare and submit three (3) hard copies of the Final Interim Action Report as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology.

#### **TASK 4. REMEDIAL INVESTIGATION / FEASIBILITY STUDY REPORT**

PFH shall use the information obtained in the Remedial Investigation to prepare an Agency Review Draft Remedial Investigation/Feasibility Study Report (RI/FS) that meets the applicable requirements of WAC 173-340-350(7) & (8) according to the Schedule in this exhibit. The Agency Review Draft RI/FS will evaluate remedial alternatives for site cleanup, consistent with MTCA and SMS requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

The Agency Review Draft RI/FS will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350 and WAC 173-204-550. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360 and WAC 173-204-570 including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable Laws
- Protection of Human Health
- Protection of the Environment
- Provision for a Reasonable Restoration Time Frame
- Use of Permanent Solutions to the Maximum Extent Practicable
- The Degree to which Recycling, Reuse, and Waste Minimization are Employed
- Short-term Effectiveness
- Long-Term Effectiveness
- Net Environmental Benefit
- Implementability
- Provision for Compliance Monitoring
- Cost-Effectiveness
- Prospective Community Acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the RI/FS Report.

PFH shall prepare and submit two (2) hard copies of the Agency Review Draft RI/FS as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. After addressing Ecology's comments on the Agency Review Draft RI/FS PFH shall prepare and submit two (2) hard copies of the Agency Review Draft Final RI/FS as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for review.

After addressing Ecology's comments on the Agency Review Draft Final RI/FS, PFH shall prepare and submit three (3) hard copies of the Public Review Draft RI/FS as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment.

Electronic survey data for monitoring locations, electronic lab data, and GIS maps of contaminant distribution shall also be provided for all drafts either in the RI/FS or as attachments. The RI/FS will not be considered Final until after a public review and comment period.

#### **TASK 5. SEPA COMPLIANCE**

PFH shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), PFH shall be responsible for the preparation of Draft and final environmental impact statements. PFH shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

#### **TASK 6. PUBLIC PARTICIPATION**

PFH shall support Ecology in presenting the Public Review Draft RI/FS Report and SEPA evaluations at one public meeting or hearing. PFH will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

After the public comment periods are completed, PFH shall prepare an Agency Review Draft Responsiveness Summary that addresses public comments. PFH shall prepare and submit two (2) hard copies of the Agency Review Draft Responsiveness Summary to Ecology for review and approval, as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment.

After addressing Ecology's comments and after Ecology approval, PFH shall prepare and submit five (5) hard copies of the Final Responsiveness Summary as well as electronic copies in Word (.doc) and Adobe (.pdf) formats.

#### **TASK 7. PRELIMINARY DRAFT CLEANUP ACTION PLAN**

Following submission of the Public Review Draft RI/FS, a Key Project Meeting will be held regarding the Cleanup Action Plan. The Cleanup Action Plan Meeting will be used to review plans for developing the Agency Review preliminary Draft Cleanup Action Plan (DCAP).

PFH shall prepare an Agency Review preliminary DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. Where contaminated sediments are included in the remedial action, the cleanup plan will comply with WAC 173-204-570 and -575, in addition to the MTCA requirements cited above. The preliminary DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the RI/FS and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

PFH will submit an Agency Review preliminary DCAP for Ecology's review and approval. The Agency Review preliminary DCAP will include, but not be limited to, the information listed under WAC 173-340-380. PFH shall prepare and submit two (2) copies of the Agency Review preliminary DCAP as well as electronic copies in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval.

After receiving Ecology's comments on the Agency Review preliminary DCAP, if any, PFH shall revise the preliminary DCAP to address Ecology's comments and submit five (5) hard copies of the Public Review DCAP as well as electronic copies in Word (.doc) and Adobe (.pdf) formats.

## SCHEDULE OF DELIVERABLES

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday.

<b>RI/FS Deliverables</b>	<b>Completion Times</b>
Agency Review Draft RI Work Plan	180 calendar days following effective date of the Agreed Order
Final RI Work Plan including Final SAP, QAPP, and HASP	45 calendar days after Ecology's written request to finalize
Completion of RI/FS Field Work	24 months following completion of the Final SAP, QAPP and HASP
Agency Review Draft RI/FS Report	180 days following receipt of laboratory data
Agency Review Draft Final RI/FS Report	45 calendar days following receipt of Ecology comments on Agency Review Draft RI/FS Report
Public Review Draft RI/FS Report	45 calendar days following resolution of Ecology comments and receipt of Ecology's written request for Public Review Draft RI/FS Report
Agency Review preliminary Draft Cleanup Action Plan (DCAP)	90 calendar days following submission of the Public Review Draft RI/FS